

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <div style="text-align: center; font-weight: bold;">149-0168US</div>
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR		Application Number <div style="text-align: center; font-weight: bold;">10/757,741</div>
on <u>February 4, 2007</u> via <u>USPTO EFS</u> Signature <u>/Rebecca R. Ginn/</u> Typed or printed name <u>Rebecca R. Ginn</u>		Filed <div style="text-align: center; font-weight: bold;">January 14, 2004</div>
First Named Inventor <div style="text-align: center; font-weight: bold;">Stephen Ray Cole</div>		Art Unit <div style="text-align: center; font-weight: bold;">2168</div>
Examiner <div style="text-align: center; font-weight: bold;">Cheyenne D. Ly</div>		
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. I am the <input type="checkbox"/> applicant/inventor. _____ <u>/William M. Hubbard/</u> <div style="text-align: right;">Signature</div> <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) _____ <u>William M. Hubbard</u> <div style="text-align: right;">Typed or printed name</div> <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>58,935</u> _____ <u>832/446-2400</u> <div style="text-align: right;">Telephone number</div> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____ <u>February 4, 2008</u> <div style="text-align: right;">Date</div>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input type="checkbox"/> *Total of _____ forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Title : Removing Overflow Rows in a Relational Database
Inventors : Stephen Ray Cole and Michael Joseph McLaughlin
Serial No. : 10/757,741 Filed : 14 Jan 2004
Examiner : Cheyne D Ly Art Unit : 2168
Docket : 149-0168US Customer : 29855

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In responding to the Examiner's prior art rejections, Assignee here only justifies the patentability of the independent claims 1, 17, 28, 43, and 58. As will be appreciated, should these independent claims be patentable over the prior art, dependent claims would also necessarily be patentable. Accordingly, Assignee does not separately discuss the patentability of the dependent claims, although Assignee reserves the right to do so.

Rejection of Claims Based on 35 USC § 102 is Without Merit

Independent claims 1, 17, 28, 43, and 58 stand rejected under 35 USC § 102(b) as allegedly being anticipated by Sockut. *See* Final Office Action at p. 3.

As filed, each independent claim recited unloading one or more identified overflow rows (*i.e.*, the act of unloading the entire table space, table or partition was expressly *not* claimed). However, to make this point more obvious, Assignee has previously amended independent claims 1, 17, 28, 43 and 58 to recite that only identified overflow rows are unloaded. *See* Response to Office Action of 28 Dec 2006 (filed on 27 March 2007) at p. 15.

The Examiner relies heavily on a citation to Sockut at p. 11. The following is a summary of p. 11 of Sockut. Sockut scans file pages and unloads the data into a file (the unload file). During the process of scanning and unloading, Sockut describes how regular records, overflow records, and pointer records are handled when found. When an overflow record is found during scanning, for example, Sockut states that the data is simply unloaded to the unload file. When a pointer is found, however, the pointer is not followed because Sockut notes that following the pointer and unloading the overflow when the page containing the pointer is scanned is inefficient. Subsequent to the unloading, the unload file is sorted and then reloaded into a new copy. *See* Sockut at p. 11.

In the rejection, the Examiner appears to argue that merely because Sockut describes "unloading an overflow" Sockut anticipates the claimed subject matter directed to "unloading only an identified overflow" row from a source table as called for in Assignee's claims. *See* Final Office Action at p. 2. This is simply not the case because Sockut does not teach or suggest unloading only overflow rows. Indeed, Sockut describes a reorganization technique in which Sockut explicitly and repeatedly relies upon the fact that entire tables, table spaces or partitions are unloaded *en masse*. *See e.g.*, Sockut at pp. 1 (Abstract), 2 (2nd ¶), 4 (7th ¶), 5 (1st, 3rd and 4th full ¶), 6 (1st and 7th full ¶), 10 (7th ¶), 11 (1st ¶), Figs. 4 and 6. In fact, the very section of Sockut relied on by the Examiner for the rejection explicitly describes unloading all regular and overflow records when scanning file pages. Sockut at p. 11. For this reason alone, the claimed subject matter is distinguishable over Sockut. *See also*, Assignee's remarks in the Reply to Office Action dated 19 June 2007 (filed 13 Aug. 2007) at pp. 13-15.

When Sockut is taken as a whole, it is undeniable that Sockut fails to unload only overflow rows. Further, because Sockut relies on unloading all rows in a tablespace, there is absolutely no basis for the Examiner's allegation that the claimed subject matter is anticipated by Sockut. The Examiner, however, merely points out similar words such as "an overflow record" and "unloading an overflow" in non-contiguous portions of Sockut's description to support the rejection. The fact that Sockut happens to use similar words in no way supports the contention that Sockut teaches or describes

the distinctly different operation of unloading only the overflow records as opposed to performing operations on an **entire** data set. In contrast to Sockut, the claimed invention unloads only rows identified as overflow rows from an area (*i.e.*, a table space, table or partition). At no time does Sockut teach or describe this action.

Furthermore, the Examiner has cited to a definition for the word only from <http://dictionary.reference.com/> in his rejection. *See* Office action dated November 11, 2007 at p. 2. The Examiner has repeatedly failed to recognize the distinction that the claimed subject matter is directed to “exclusively” (a synonym for only) overflow rows. Sockut unloads tables *en masse*, not only overflow records.

For at least these reasons, Sockut fails to teach each recited element of the claimed invention. As a consequence, the Examiner has failed to make a legitimate *prima facie* case of anticipation. Accordingly, Assignee respectfully requests that these rejections be withdrawn and that independent claims 1, 17, 28, 43 and 58 are passed to allowance. For at least the same reasons, claims 2-6, 14-16, 18-20, 27, 29, 30, 39-42, 44-48, 55-57, 59, 60 and 69-72 (each of which depend from one of independent claims 1, 17, 28, 43 and 58) are allowable over Sockut. Such action is respectfully requested.

Examiner's Rejection of Claims Based on 35 USC § 103 is Without Merit

Each of claims 7, 21, 31, 32, 49 and 61 rejected based on 25 USC § 103 is a dependent claim. Each of these claims are allowable for at least the same reasons as are independent claims 1, 17, 28, 43 and 58 (see discussion above). Accordingly, Assignee respectfully requests that these rejections be withdrawn and pass all claims to allowance.

Conclusion

Reconsideration of the claims in light of the above remarks is respectfully requested.

/William M. Hubbard, J.D./
Reg. No. 58,935

Wong, Cabello, Lutsch, Rutherford & Brucculeri, L.L.P.
Customer No. 29855 Voice: 832-446-2445
20333 SH 249, Suite 600 Mobile: 713-302-4648
Houston, Texas 77070 Facsimile: 832-446-2424
Email: whubbard@counselIP.com